



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 12 2011

201144040

Uniform Issue List: 402.00-00

T:EP:RA:T1

Legend:

Taxpayer A	=
Company B	=
Financial Institution C	=
Financial Institution D	=
IRA X	=
Account Y	=
Stock Amount D	=
Stock Amount E	=
Stock Amount F	=
Stock Amount G	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=

201144040

Dear :

This letter is in response to your request for a letter ruling dated May 12, 2011, from your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to an error by Company B which provided incorrect taxable income amount information to Taxpayer A that caused him to make a partial rollover contribution of Stock Amount E of Company B's common stock, instead of a correct partial rollover contribution of Stock Amount D, to IRA X, an individual retirement arrangement ("IRA") maintained with Financial Institution D.

Taxpayer A was employed by Company B and was a participant in Company B's 401(k) plan. In September, 2010, Taxpayer A, age XX, requested a full distribution of his 401(k) account, which was completely invested in Company B's common stock for a total number of shares equal to Stock Amount G. Taxpayer A's intent in taking a full distribution from his 401(k) retirement account was to complete a partial rollover into IRA X of only the taxable amount portion of the gross distribution. Taxpayer A relied upon erroneous information contained in the Taxable Amount Information statement that was prepared by Company B acting as the administrator of Taxpayer A's 401(k) plan. Of the gross distribution (Amount 1) made to Taxpayer A, the taxable amount portion was incorrectly shown to be Amount 4.

Taxpayer A received a full distribution of Stock Amount G on September 24, 2010, which he placed into Account Y, a taxable brokerage account with Financial Institution D, which was also acting as the custodian of Taxpayer A's IRA X. In making a partial rollover contribution equal to the taxable amount portion of the gross distribution, Taxpayer A calculated the number of shares of stock to be rolled over based on information incorrectly showing Amount 4 to be the taxable amount portion of the gross distribution.

On November 3, 2010, within 60 days of the original distribution date of September 24, 2010, Taxpayer A, relying on the erroneous information, made a partial rollover contribution of Stock Amount E, with a rollover value of Amount 2, to IRA X.

In January, 2011, Taxpayer A received Form 1099-R from Financial Institution C, the custodian of Taxpayer A's 401(k) account, which provided the same erroneous information that Company B had previously provided to Taxpayer A.

On or after February 24, 2011, more than 60 days after Taxpayer A received the full distribution from his 401(k) retirement account and more than 60 days after Taxpayer A made a partial rollover contribution to IRA X, Taxpayer A received a corrected 401(k) Taxable Amount Information statement from Company B. This new statement indicated that the earlier statement was erroneous and also provided the correct taxable amount information, showing the correct taxable amount portion of the gross distribution to be Amount 5, which is an increase of Amount 3 over the figure (Amount 4) that was previously provided to Taxpayer A. Taxpayer A also received a revised Form 1099-R from Financial Institution C showing the correct taxable amount portion to be Amount 5.

Stock Amount F is represented to be the number of shares of Company B common stock that is equivalent in value to Amount 3 (Amount 5 less Amount 4).

Taxpayer A, after receiving the corrected information, contacted Financial Institution D to inquire if he could make a rollover contribution of additional stock from Account Y to IRA X to reflect the corrected taxable amount portion of the distribution. Financial Institution D informed Taxpayer A that the 60-day rollover period had expired.

Based on the above facts and representations, Taxpayer A has requested a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the contribution of additional shares of stock, Stock Amount F, from Taxpayer A's Account Y to IRA X to reflect the corrected taxable income amount.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Stock Amount F was caused by the erroneous taxable income amount information that was furnished to him by Company B.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the rollover of additional shares of stock (Stock Amount F) which were previously distributed from Taxpayer A's 401(k) account and are now held in Account Y. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution of shares of stock equal to Stock Amount F into IRA X will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable thereto.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XX XXXXX XXXXXXXX (ID Number XX-XXXXXX) by phone at (XXX) XXX-XXXX or by fax at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted copy of ruling letter
- ▶ Notice of Intention to Disclose

cc: